IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 441

DOUGLAS BRYANT and DORIS MAY BRYANT,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS and THE CITY OF CHICAGO,

Respondents,

and

THE PEOPLE OF THE STATE OF ILLINOIS ON THE RELATION OF DOUGLAS BRYANT and DORIS MAY BRYANT,

Petitioner,

vs.

MAURICE W. LEE, MAGISTRATE OF THE MUNICIPAL COURT OF CHICAGO, FIRST MUNICIPAL DISTRICT OF THE CIRCUIT COURT OF COOK COUNTY,

Respondent.

(Petition for a Writ of Certiorari to the Illinois Supreme Court.)

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW.

People of the State of Illinois, et al., vs. *Douglas Bryant, et al.*, Supreme Court of the State of Illinois, General No. 40281, is presently pending in the Supreme Court of the State of Illinois, and no opinion or decision has been rendered thereon.

People ex rel. Douglas Bryant, et al., v. *Maurice W. Lee, Magistrate of the Municipal Court of Chicago, etc.*, Supreme Court of the State of Illinois, General No. 40300, was an original action in *mandamus* which was denied on January 9, 1968.*

JURISDICTIONAL STATEMENT.

The petitioners have prematurely filed a petition for writ of *certiorari* to the Supreme Court of the State of Illinois, in that no final decision or opinion has been rendered by that court as required by Section 1257 (3) of the United States Code.

QUESTIONS PRESENTED.

1) Whether a petition for *certiorari* may be filed where no final opinion or decision of the highest court of a state has been rendered?

2) Whether the petitioners, who were convicted of misdemeanors, are entitled to a free transcript as a matter of right under the Fourteenth Amendment to the United States Constitution?

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*Original actions in the Supreme Court of the State of Illinois are discretionary and not a matter of right. Constitution of the State of Illinois, Art. VI, Sec. 5.

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE IN THAT NO FINAL OPINION OR DECISION HAS BEEN RENDERED BY THE SUPREME COURT OF THE STATE OF ILLINOIS.

Douglas Bryant and Doris May Bryant, petitioners, appealed to the Supreme Court of the State of Illinois, General No. 40281, from a finding of guilty on misdemeanor charges in the First Municipal District of the Circuit Court of Cook County.

The petitioners filed the record on appeal in that cause on December 14, 1967, but have not as of this date filed their appellants' brief. The appeal is presently pending in the Supreme Court of the State of Illinois.

In that appeal the petitioners can urge the same issues which they urge in the petition for *certiorari*.

Section 1257 of the United States Code provides, in part, as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
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> * * * * *
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> "(3) By writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

In addition thereto, the petitioners filed an original action in the Supreme Court, General No. 40300, for a writ of *mandamus* as authorized by Article VI, Section 5 of the Constitution of the State of Illinois. Original actions in the Supreme Court of the State of Illinois are completely discretionary, and therefore the denial of said actions does not constitute a decision on the merits.

The Supreme Court of the State of Illinois having not rendered a final decision or opinion, it is submitted that this cause should be dismissed because it has been prematurely filed.

II.

THE GRANT OF DISCRETIONARY POWER TO A TRIAL COURT TO FURNISH A PETITIONER WITH A TRANSCRIPT OF THE REPORT OF PROCEEDINGS, IN A MISDEMEANOR CAUSE, DOES NOT VIOLATE THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The respondents fully concede that since the decision of this Court in *Griffin* v. *Illinois,* 351 U.S. 12, a State is required to furnish a free transcript to any indigent convicted of a felony. However, this principle has not been extended to misdemeanor convictions, and there are compelling reasons why it should not be mandatory but rather discretionary.

In the area of misdemeanor conviction we are generally talking of incarceration for a short period of time. Upon conviction it is discretionary in the State of Illinois and other jurisdictions to release an individual upon his own recognizance bond during the pendency of an appeal. If the trial judge, exercising his discretion, decides that the

past record, the nature of the crime and/or demeanor of the defendant are such so that a recognizance bond should not be issued, it would be of little value to afford said defendant with a transcript of the report of proceedings, for the sentence would in all probability be completed far before any effectual appellate relief could be granted.

Since in most instances effectual relief could not be granted to the defendant even where he was afforded a transcript of proceedings, the State of Illinois submits that each case should be decided by the discretionary action of the trial judge.

CONCLUSION

For the above reasons, respondents respectfully submit that this petition for certiorari be denied.

Respectfully submitted,

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